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EXAMINER

THAKUR, VIREN A

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHARLES PROPST, JR.

Appeal 2015-005809
Application 12/995,311
Technology Center 1700

Before JEFFREY T. SMITH, N. WHITNEY WILSON, and
JEFFREY R. SNAY, *Administrative Patent Judges*.

SNAY, *Administrative Patent Judge*.

DECISION ON APPEAL¹

Appellant² appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1, 3–10, and 18–22. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We refer to the Specification (“Spec.”) filed November 30, 2010, as amended; Final Office Action (“Final Act.”) dated June 11, 2014; Appellant’s Appeal Brief (“Br.”) dated December 31, 2014; and Examiner’s Answer (“Ans.”) dated March 20, 2015.

² Appellant identifies Spectra-kote Corporation as the real party in interest. Br. 2.

BACKGROUND

The subject matter on appeal relates to waterproof or water-resistant coated paper or paperboard products, such as food trays. Spec. ¶¶ 5–6. Sole independent claim 1 is reproduced from the Claims Appendix of the Appeal Brief as follows:

1. A foodstuff container comprising: a container selected from the group consisting of a food tray and a food pan to contain an uncooked foodstuff, the container consisting of a structural paper-based layer coated with a polymer coating, wherein the sole polymer in the polymer coating consists of a poly(methyl methacrylate), wherein the polymer coating is coated in a position in the container to be in direct contact with the uncooked foodstuff, and wherein the structural paper-based layer comprises a component selected from the group consisting of paper, paperboard, corrugated paper, bag stock, ream wrap, roll wrap, folding board, solid fiber, and combinations thereof; wherein the resultant container has the property of suitably containing the foodstuff during a processing step selected from the group consisting of cooking, baking and combinations thereof.

REJECTIONS

The Examiner maintains the following grounds of rejection:³

- I. Claims 1, 3–10, and 18–21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Di Mino⁴ in view of Gray⁵ and either Chalin⁶ or

³ Final Act. 6–17, 21–24; Ans. 2–19. Additional rejections under 35 U.S.C. §§ 112 and 103(a) set forth in the Final Office Action stand withdrawn. *See* Advisory Action (dated October 20, 2014) at ¶ 1; Ans. 19.

⁴ US 5,470,594, issued November 28, 1995 (“Di Mino”).

⁵ US 3,676,058, issued July 11, 1972 (“Gray”).

⁶ US 3,873,735, issued March 25, 1975 (“Chalin”).

- Wydler,⁷ further in view of Bowden,⁸ Russell,⁹ Overcash¹⁰ or Debikey.¹¹
- II. Claim 22 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Di Mino, Gray, and Chalin, further in view of Bowden, Russell, Overcash or Debikey.
- III. Claims 1, 3–10, and 18–21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Gray in view of Di Mino, Overcash, Debikey, Bowden, and Russell.
- IV. Claim 22 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Gray in view of Di Mino, Overcash, Debikey, Bowden, Russell, and Chalin.
- V. Claims 1, 4–10, and 18–21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Debikey in view of Gray.
- VI. Claim 3 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Debikey in view of Gray and Overcash.
- VII. Claim 22 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Debikey in view of Gray and Chalin.

⁷ US 2007/0164045 A1, published July 19, 2007 (“Wydler”).

⁸ US 2005/0120915 A1, published June 9, 2005 (“Bowden”).

⁹ US 2005/0153088 A1, published July 14, 2005 (“Russell”).

¹⁰ US 6,187,389 B1, issued February 13, 2001 (“Overcash”).

¹¹ US 6,649,213 B2, issued November 18, 2003 (“Debikey”).

DISCUSSION

I

With regard to Rejection I, Appellant argues the rejected claims as a group.¹² Br. 5–10. In accordance with 37 C.F.R. § 41.37(c)(1)(iv), we select claim 1 as representative and decide the appeal as to Rejection I based on the representative claim alone.

The Examiner finds that Di Mino discloses a food container formed of a structural paper-based material coated internally and externally with a polymer coating consisting of poly(methyl methacrylate). Final Act. 10–11; *see also* Ans. 3 (“Di Mino teaches polymer coatings where the polymer in the polymer coating consists of poly(methyl methacrylate)”). The Examiner interprets the term, “tray,” in claim 1 as “a receptacle with slightly raised edges,” *id.* at 10, and finds that Di Mino’s container meets that definition and, in any event, that it would have been obvious to provide Di Mino’s container as a covered tray in view of Chalin’s disclosure of tray-shaped food containers, *id.*; Ans. 20.

Appellant contests the Examiner’s interpretation of “tray,” arguing that “the correct interpretation of tray means a flat receptacle, made of a structural paper-based product with a polymer coating, wherein the sole polymer in the polymer coating consists of poly(methyl methacrylate), with raised edges.” Br. 6 (internal quotations omitted). Appellant’s proposed definition essentially adopts the Examiner’s proffered definition of tray and

¹² Appellant’s listing of certain dependent claims, Br. 3–4, or reiteration of claim recitations therein, *id.* at 9–10, does not constitute separate argument as to patentability of those dependent claims. *See* 37 C.F.R. § 41.37(c)(1)(iv).

adds to it the additional features expressly recited in claim 1. Accordingly, we see no meaningful dispute regarding the interpretation of the term “tray,” which we agree would be understood to refer to an essentially flat receptacle with raised edges, and that claim 1 requires that the recited “tray” is made of a structural paper-based product with a polymer coating, wherein the sole polymer in the polymer coating consists of poly(methyl methacrylate).

Appellant also argues that Di Mino’s disclosed container is a pouch and, therefore, is not a tray. Br. 6. However, irrespective of whether Di Mino’s pouch meets the definition of a tray, Appellant’s argument fails to meaningfully address the Examiner’s determination that it would have been obvious to form Di Mino’s container as a covered tray in light of the teachings in Chalin.¹³

Appellant additionally argues that Di Mino’s inner coating is disclosed as exhibiting a low glass transition temperature and, for that reason, Di Mino’s container is not suitable for use in cooking and/or baking. Br. 6. Claim 1 recites that the “container has the property of suitably containing the foodstuff during a processing step selected from the group consisting of cooking, baking and combinations thereof,” without specifying any particular cooking or baking temperature. Di Mino discloses that the inner poly(methyl methacrylate) coating is selected so as to be “rendered molten by a standard heat sealing bar of the type used, for example, to apply pressure and heat to thermoplastic films . . . to seal them together.” Di Mino

¹³ Appellant’s sole argument with regard to the Examiner’s reliance on Chalin is that “Chalin clearly teaches a pouch.” Br. 9 (citing Chalin col. 6, ll. 3–5). However, the passage of Chalin identified by Appellant makes no reference to a pouch and, instead, refers to Chalin’s Figure 35 which Chalin expressly identifies as depicting a “tray **1108**.” Chalin col. 21, ll. 35–37.

col. 4, ll. 15–19. Appellant does not point us to persuasive evidence the heat sealing property of Di Mino’s inner coating would preclude use in cooking or baking, e.g., at temperatures lower than a heat sealing temperature. Conversely, Chalin teaches that it was known to provide temperature sensitive adhesive coatings for heat sealing covered food containers where the resulting containers are useful for purposes of heating and cooking. *See* Chalin col. 13, ll. 7–20. Thus, Appellant’s argument that Di Mino’s poly(methyl methacrylate) coating would have rendered the resulting container unsuitable for cooking or baking is not supported by the evidence of record and, therefore, is not persuasive.

The Examiner additionally refers to Gray, Bowden, Russell, Overcash, and Debikey as supplemental teachings regarding either the use of poly(methyl methacrylate) coating in food containers or providing food containers in the shape of a tray. Final Act. 8–10. Appellant’s remaining arguments against Rejection I, Br. 7–9, address these additionally cited references individually and, therefore, do not refute the Examiner’s determination of obviousness based on the collective teaching of the relied upon prior art. Appellant’s challenges against the various other prior art citations are not persuasive of reversible error in this case.

For the foregoing reasons, we will sustain Rejection I.

II

With regard to Rejection II, Appellant solely argues that “Chalin has no disclosure” regarding the use of the containers disclosed therein for the purpose of cooking or baking meat with gravy. Br. 10. However, Chalin plainly and expressly teaches that the disclosed food containers “may be

heated by inserting the package in an electric toaster or other similar heating device,” Chalin Abstr., and that illustrative foods that may be contained and heated include “meat loaf (with and without gravy),” *id.* at col. 2, ll. 33–34. Appellant’s argument is contrary to the evidence and not persuasive.

We sustain Rejection II.

III–IV

With regard to Rejection III, Appellant argues the rejected claims as a group, and solely argues that “[n]owhere within the four corners of Gray is described a container consisting of a structural paper-based layer coated with a polymer coating, wherein the sole polymer in the polymer coating consists of a poly(methyl methacrylate) as claimed.” Br. 11 (internal quotations omitted). We select claim 1 as representative and sustain Rejection III based on the findings and reasoning set forth in the Final Office Action. Appellant’s argument that Gray fails to anticipate claim 1 does not address the Rejection at issue, which is based on the collective teachings Gray in combination with the additionally relied-upon prior art.

With regard to Rejection IV, Appellant solely argues that “there is nothing further in Gray to support a meat foodstuff having one of a gravy or a sauce.” *Id.* However, the Examiner relies upon Chalin for that teaching, which Appellant’s argument does not refute. Final Act. 16.

For the foregoing reasons, Appellant’s arguments fail to identify reversible error in either of Rejections III and IV. These Rejections, therefore, are sustained.

V–VII

Appellant does not separately argue against any of Rejections V–VII.
See Br. 5–11. Accordingly, each of these Rejections is sustained.

DECISION

The Examiner’s decision rejecting claims 1, 3–10, and 18–22 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136.

AFFIRMED